

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF NORTH DAKOTA

ENERGY TRANSFER EQUITY, LP, *ET AL.*

PLAINTIFFS

VS.

1:17-CV-00173-BRW

GREENPEACE INTERNATIONAL, *ET AL.*

DEFENDANTS

ORDER

Pending are Defendants Greenpeace Fund, Inc., Greenpeace International, and Greenpeace, Inc.’s (collectively “Greenpeace”) Motions to Dismiss. Plaintiffs Energy Transfer Equity, L.P. and Energy Transfer Partners, L.P. (collectively “Energy Transfer”) responded and Greenpeace replied.¹ For the reasons set out below, the Motions to Dismiss (Doc. Nos. 38, 40) are DENIED without prejudice. The motions for hearing (Doc. Nos. 49, 82) are also DENIED.²

By 5 p.m., August 3, 2018, Energy Transfer must file an amended complaint. The parties may renew their motions after the Amended Complaint is filed.

I. BACKGROUND

The legal dispute over the Dakota Access Pipeline (“DAPL”) is well-documented.³ This Order involves three groups opposed to DAPL.

The 187-page complaint is impossible to summarize.⁴ In broad strokes, Transfer Energy alleges Greenpeace violated the Racketeer Influenced and Corrupt Organizations Act (“RICO”) by operating a criminal enterprise engaged in:

¹Doc. Nos. 65, 77, and 79.

²Doc. Nos. 49 and 82.

³The lengthy factual history of this dispute is outlined in *Standing Rock Sioux Tribe v. U.S. Army Corps of Engineers*, 255 F. Supp. 3d 101, 2017 WL 2573994 (D.D.C. June 14, 2017).

⁴Doc. No. 1.

(I) violating or otherwise funding, directing, controlling, and intentionally inciting acts of terrorism that violate the U.S. Patriot Act, including damaging or attempting to damage an energy facility and committing arson on federal property and on private property used for interstate commerce; (ii) using the mails and wires as part of a scheme to defraud donors, supporters, state and federal treasuries, and others; (iii) tax fraud; (iv) interstate drug trafficking; (v) transporting and transmitting misappropriated funds and property through interstate commerce; and (vi) conspiracies to do the same.⁵

Energy Transfer alleges the “Red Warrior Camp” carried out violent criminal conduct that would give rise to the majority of the RICO claims.⁶ It also alleges fraud.

Energy Transfer has failed to state plausible RICO claims against Greenpeace. It also has failed to comply with basic rules of pleading. Energy Transfer provided enough information, however, to merit amendment instead of dismissal of the Complaint at this stage.

II. PLEADING

The most basic requirement of pleading is “simple, concise, and direct” allegations.⁷ Here is a single, typical allegation among the 442 separate allegations in the 187-page complaint:⁸

44. For years, the Greenpeace Enterprise members as well as Enterprise members BankTrack, 350.org, Sierra Club, Bold Alliance, Earthjustice, and the other putative “green groups” have regularly worked in concert to execute dozens of these fraudulent schemes. When the extortion succeeds, these putative environmental groups insist that their target publicly endorse their campaign and lies, which they then use to drive further donations and attacks. For example, Enterprise members Greenpeace, 350.org, RAN, Sierra Club, and BankTrack pursued a concerted campaign against companies extracting oil from the Canadian Tar Sands, and, in doing so, relied on the relentless dissemination of false but “ALARMIST SENSATIONAL FACTOIDS,” publishing the production of putatively spontaneous protests, violence, and other criminal activity. Indeed, Jane Kleebe, the founder of the extremist group and Enterprise member Bold Nebraska, identified a sensational campaign against the Tar Sands as business opportunity for Bold to become the face

⁵Doc. No. 1, pp. 13-14, 167.

⁶Doc. No. 1, pp. 6-8, 20-21, 47-48, 51-53, 68-70, 128, 130-133.

⁷FED.R.CIV.P. 8(d)(1).

⁸The total of 442 separate allegations does not include over 100 sub-allegations contained within the allegations.

of a high-profile campaign against fossil fuel development. Consistent with their playbook, the ENGOs ubiquitously disseminated baseless and alarmist allegations of catastrophic impacts of extraction of tar sand oil, including in a September 2011 Greenpeace publication “The World’s Largest Carbon Bomb,” which threatened, among other things, that “carbon contained in the tar sands is enough to send Earth’s atmosphere into runaway heating, releasing ancient methane and killing sea life and forests, so that humanity could not reverse the heating regardless of what we do.” 350.org echoed these same falsehoods, falsely representing that the tar sands are “one of the world’s largest and most dangerous pools of carbon,” which, if extracted, “will . . . mean more asthma and respiratory diseases, more cancer, and more cardiovascular problems.” Likewise, Sierra Club published a video in June 2012 entitled “The Tar Sands Pipelines: The Dirtiest Oil on Earth,” which accused the tar sands of “generating massive greenhouse gas pollution and dumping cancer-causing chemicals into the air and water.” And BankTrack claimed that the logging necessary to extract oil from the tar sands “is fatal for the climate.” These claims were completely untethered to fact but sufficiently sensational to generate high publicity and emotion and drive visitors and donors to the website of the tar sands pack. Based on these sensational and alarmist statements, the Enterprise staged protests and encouraged activists to get arrested to pressure politicians and the media.⁹

This allegation is not part of the “preliminary statement.” Instead, this is a “statement of fact” Transfer Energy uses to establish a “fraudulent scheme” and “pattern and practice of fraud and other illegality” with particularity.

Energy Transfer outlines broad claims by copying statutory elements to the Complaint, but the factual basis for the claims appears intentionally obscured. For example, the primary allegations connecting Greenpeace to the Red Warrior Camp and alleged RICO violations are:

13. Defendant Earth First! provided \$500,000 of seed money to a core group of violent eco-terrorist infiltrators, who then formed what would be known as Red Warrior Camp. Red Warrior Camp operated as a rogue group at the protest site, refusing to work collaboratively with the Tribe or the protestors’ various ad hoc governing bodies. *Greenpeace also organized donation drives to fund, feed, and house the militant group in ten cities across the country.* Red Warrior Camp advertised their violent confrontations to secure additional funding, and used other illegal means, including selling drugs bought with donated money to other protestors at the camps to finance their operations and line their own pockets.¹⁰

⁹Doc. No. 1, p. 28-29.

¹⁰Doc. No. 1, p. 6 (emphasis added).

Notably, Energy Transfer alleged Defendant Earth First! was a Florida nonprofit corporation, but it appears no such entity exists and it has not been served.¹¹ Red Warrior Camp and dozens of other groups and individuals are named in the Complaint, but not as parties. Energy Transfer vaguely connects these nonparty individuals and groups to Greenpeace through an “enterprise” “whipped into a frenzy” by a “front for Greenpeace.”¹²

91. The radical militant group Red Warrior Camp was funded both *directly and indirectly by the Enterprise*. Earth First! gave \$500,000 of seed money to Red Warrior Camp to establish its presence near the juncture of the pipeline construction and the Lake Oahe crossing. The purpose of Red Warrior Camp’s infiltration of more peaceful demonstrators was to instigate criminal behavior, incite violent incidents, and generate sensational video and still images that these groups could use to foment public emotions worldwide, generating donations for all the Enterprise members engaged in this “cause.” Red Warrior Camp quickly established itself as an outlier, rogue element, among the thousands gathering in North Dakota at the Oceti Sakowin Camp, refusing to cooperate with the loose affiliation of tribal authorities that was attempting to manage the throngs of native and non-native activists that descended upon the region and repeatedly taking unilateral criminal action without consulting with or getting approval from, and in direct opposition to, the Tribe.¹³

Sifting through the accusations, Greenpeace’s direct action in the immediate case appears to be publishing “Supply Drives for Red Warrior and Sacred Stone Camps.”¹⁴ Was this the “direct and indirect” funding of an alleged international criminal enterprise?

Indirectly funding a separate entity (who Energy Transfer fails to name as a party) appears to be the only connection between Greenpeace and the majority of the allegations here. The details concerning the “donation drives,” Greenpeace’s precise role in them, to whom Greenpeace gave funds, how housing and feeding individuals in cities across the country furthered violent protests in North Dakota, are all left unanswered.

¹¹Doc. No. 1, p. 13; Doc. Nos. 33, 44, 51, 64, 66, 70, 72, 74, 80, 81, 86.

¹²Doc. No. 1, pp. 51, 130.

¹³Doc. No. 1, p. 47 (emphasis added).

¹⁴Doc. No. 1, p. 155

The alleged RICO violations are separate from the Red Warrior Camp involved fraud. Energy Transfer failed to properly plead any of the particulars of the alleged fraudulent activities. The where, when, and how of the alleged fraud is obscured by the airing of years-long, unrelated grievances.

To broaden an already vague Complaint, Energy Transfer also notes many of the allegations “included, but were not limited to”¹⁵ actions taken “specifically, among other things.”¹⁶ This makes it impossible for Greenpeace to sift through the Complaint in search of the precise factual basis for the asserted claims.¹⁷ This Circuit consistently requires *pro se* parties to plead with more clarity, and less irrelevant hyperbole, than present here.¹⁸

To avoid dismissal, Energy Transfer must file an amended complaint containing concise and direct allegations against each named Defendants. Energy Transfer must also plead any allegations of fraud with particularity.

CONCLUSION

This case involves important matters of public concern. Due to the collection of grievances littering the complaint, however, it is unclear what each Defendant allegedly did, specifically, to give rise to the asserted claims. Greenpeace’s Motions to Dismiss (Doc. Nos. 38 and 40) are DENIED, without prejudice to renewal if Energy Transfer files an amended

¹⁵Doc. No. 1, ¶372.

¹⁶Doc. No. 1, ¶373.

¹⁷See *Vicom, Inc. v. Harbridge Merch. Servs., Inc.*, 20 F.3d 771, 775-776 (7th Cir. 1994) (primary purpose of Rule 8 is to allow court and opposing party to understand whether valid claim is alleged and, if so, what it is; complaint must be sufficiently clear so court or opposing party is not required to keep sifting through it in search of what it is plaintiff asserts).

¹⁸*Cody v. Loen*, 468 Fed. Appx. 644, 645 (8th Cir. 2012); *Davis v. Boylan*, 670 Fed. Appx. 435, 436 (8th Cir. 2016).

complaint that complies with this Order. The motions for hearing (Doc. Nos. 49, 82) are DENIED.

IT IS SO ORDERED this 25th day of July, 2018.

/s/ Billy Roy Wilson
UNITED STATES DISTRICT JUDGE